

S.R. 839 - By Senator Aikin: Extending welcome to Dr. H. D. Bruce.

### RECESS

On motion of Senator Aikin the Senate at 3:10 o'clock p.m. took recess until 9:30 o'clock a.m. tomorrow.

### APPENDIX

#### Sent to Governor

May 22, 1973

S.C.R. 11	S.B. 467
S.C.R. 23	S.B. 487
S.C.R. 24	S.B. 508
S.C.R. 25	S.B. 523
S.C.R. 26	S.B. 538
S.C.R. 37	S.B. 593
S.C.R. 76	S.B. 605
S.C.R. 78	S.B. 609
S.C.R. 86	S.B. 610
S.C.R. 90	S.B. 612
S.C.R. 116	S.B. 617
S.B. 32	S.B. 675
S.B. 64	S.B. 684
S.B. 123	S.B. 709
S.B. 138	S.B. 722
S.B. 180	S.B. 764
S.B. 209	S.B. 777
S.B. 231	S.B. 802
S.B. 234	S.B. 806
S.B. 252	S.B. 816
S.B. 269	S.B. 818
S.B. 328	S.B. 839
S.B. 334	S.B. 855
S.B. 349	S.B. 859
S.B. 370	S.B. 863
S.B. 392	S.B. 867
S.B. 405	S.B. 871
S.B. 432	S.B. 886
S.B. 455	S.B. 893
S.B. 464	S.B. 923

### EIGHTIETH DAY

(Continued)

(Wednesday, May 23, 1973)

#### After Recess

The Senate met at 9:30 o'clock a.m., and was called to order by the President.

Dr. James L. Stoner, Central Christian Church, Austin, Texas, offered the invocation as follows:

Our Father, spare us from the yawning of indifference, the doodling of complacency, and get down to the brass tacks of decision-making that will affect the future of our great state. We pray in the name of Christ who always went directly to the heart of the matter and did not shadow-box, intimidate or hesitate. Amen.

### MESSAGE FROM THE HOUSE

Hall of the House of Representatives  
Austin, Texas, May 23, 1973

Honorable William P. Hobby  
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

Pursuant to the provisions of H.C.R. 207, H.B. 1585 is being returned to the Senate for further consideration.

The House named the following members as conferees on H.B. 447: Von Dohlen, Chairman; Hendricks, Washington, Sullivant and Wyatt.

The House has granted the request of the Senate for the appointment of a Conference Committee on S.B. 360. House conferees: Hubenak, Chairman; Caldwell, Hilliard, Bynum and Baker.

The House has refused the request of the Senate for the appointment of a Conference Committee on S.B. 721.

Pursuant to the provisions of H.C.R. 209, S.B. 822 is being returned to the Senate, with amendment, for further consideration.

Respectfully submitted,  
DOROTHY HALLMAN  
Chief Clerk, House of Representatives

### SENATE BILLS AND RESOLUTION ON FIRST READING

By unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

By Senator Sherman:

S.B. 994, A bill to be entitled An Act amending Title 102, Revised Civil Statutes of Texas, "Oil and Gas", by adding a new article, Article 6066c, relating to the duty of the Railroad Commission of Texas to protect the rights and interests of the consuming and purchasing public of LPG Products, providing for hearings and determinations, and declaring an emergency.

To Committee on Natural Resources.

By Senators Meier and Andujar:

S.B. 995, A bill to be entitled An Act apportioning Tarrant County into single-member representative districts; and declaring an emergency.

To Committee on Administration.

By Senator Wallace:

S.R. 844, Resolving that Intergovernmental Relations Committee undertake

an extensive study of the burn problem with the intention of adopting a comprehensive burn prevention code.

To Committee on Administration.

### SENATE CONCURRENT RESOLUTION 121

Senator Gammage offered the following resolution:

S.C.R. 121, Instructing conferees on S.B. 807.

On motion of Senator Gammage and by unanimous consent, the resolution was considered immediately and was adopted by the following vote: Yeas 29, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Sherman, Snelson, Traeger, Wallace and Wolff.

Absent: McKinnon and Schwartz.

### SENATE BILL 854 WITH HOUSE AMENDMENT

Senator Snelson called S.B. 854 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

### AMENDMENT NO. 1

Amend S.B. 854 by striking all below the enacting clause and substituting in lieu thereof the following:

Section 1. Section 2, Chapter 397, Acts of the 54th Legislature, 1955, as last amended by Chapter 418, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3.70-2, Vernon's Texas Insurance Code), is amended by adding Subsection (D) to read as follows:

"(D) No individual policy or group policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery to any person in this state which provides for accident and sickness coverage of additional newborn children or maternity benefits, may be issued in this state if it contains any provisions excluding or limiting initial coverage of a newborn infant for a period of time, or limitations or exclusions for congenital defects of a newborn child."

Sec. 2. This Act shall apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in the State of Texas on and after January 1, 1974. The insurer, upon a renewal, extension, or amendment, may charge such additional premiums as are just and reasonable for the additional risk incurred by compliance with this Act. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Texas Insurance Code.

Sec. 3. If any provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining provisions of this Act, but the remaining provisions shall remain in full force and effect.

Sec. 4. The importance of this legislation and the crowded condition of

the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The House amendment was read.

Senator Snelson moved to concur in House amendment.

The motion prevailed.

**SENATE CONCURRENT RESOLUTION 119  
WITH HOUSE AMENDMENT**

Senator Aikin called S.C.R. 119 from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

**AMENDMENT NO. 1**

Amend S.C.R. 119 by striking the resolving clause and the first two lines of Paragraph 1 to read as follows:

"Be it resolved by the Senate of the State of Texas, the House of Representatives concurring, that Senate Rule 96 (a) and (b), House Rule 24, Sections 8 and 9 and Joint Rule 29 be suspended in part, as provided by Senate Rule 96 (f), House Rule 24, Section 13 and Joint Rule 33, to enable consideration of, and action on, the following specific matters contained in the Conference Committee Report on House Bill 139 (For convenience, references are House version items):

"1. That House Rule 24, Section 8, Senate Rule 96 (a) and Joint Rule 29 are suspended to allow the following:"

The House amendment was read.

Senator Aikin moved to concur in House amendment.

The motion prevailed.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 139**

Senator Aikin submitted the following Conference Committee Report:

Austin, Texas  
May 22, 1973

Honorable William P. Hobby, Lieutenant Governor  
President of the Senate

Honorable Price Daniel, Jr.  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on Senate Committee Substitute for

H.B. 139, have met and had the same under consideration, and beg to report back with the recommendation that it do pass in the form attached.

AIKIN  
BROOKS  
CREIGHTON  
MOORE  
SCHWARTZ  
On the part of the Senate

CALDWELL  
MENEFE  
C. PARKER  
W. PARKER  
ROSSON  
On the part of the House

The Conference Committee Report was read and was adopted.

### RECORD OF VOTES

Senators Gammage, Mengden, Ogg and Blanchard asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report.

### REASON FOR VOTE

I voted against the Conference Committee Report on the Appropriations Bill because it appropriates more money than the State is presently raising in taxes.

The additional money for these expenditures is allegedly to come from the federal government in the form of revenue sharing. However, if these funds were to be impounded or otherwise fail to materialize, we would have to raise state taxes to pay for these appropriations.

I believe Texas should live within its income and gear its expenditures to its revenues. Depending on elusive federal funds to pay our bills is not compatible with a policy of fiscal responsibility.

MENGDEN

### MESSAGE FROM GOVERNOR

The following Message from the Governor was read and filed with the Secretary of the Senate:

Austin, Texas  
May 22, 1973

### TO THE MEMBERS OF THE SIXTY-THIRD LEGISLATURE, REGULAR SESSION:

Pursuant to the provisions of Section 5, Article III of the Constitution of the State of Texas, I herewith submit as an emergency matter the following:

A bill relating to the presumption of date of death according to a relating certificate of death issued by the armed services.

In the past few weeks, with the return of the prisoners of war from Southeast Asia, it has been brought to light that under present Texas statutes, it may be necessary for a spouse or a family to wait seven years after a person has been declared "missing and presumed to be dead" before the family members can obtain an official declaration of death from the Courts.

The testimony of returned prisoners of war is being used by the Department of Defense to change the status of many American servicemen from "Missing in Action" (MIA) to "Killed in Action" (KIA). In some cases, this change in status is based upon probabilities rather than absolute fact and leads to a statement of "presumed to have been killed in action."

At the time when the Department of Defense changes the status to "Killed in Action", all benefits and pay to the next of kin cease.

However, under our present Texas law, the survivors of such individuals may be forced, by Court interpretation, to wait an unreasonable length of time without benefit of insurance payments, proceeds from an estate, or without service-connected pay.

For example, one year after a man was shot down over North Vietnam, a returned prisoner of war says he saw the airman's plane take a solid antiaircraft-artillery hit, and the pilot could not have survived. Based on this testimony, the Department of Defense presumes the man to be dead and changes his status from Missing in Action to Killed in Action.

Despite this change in status by the Department of Defense, the next of kin in Texas may still be forced to wait an additional six years - or a total of seven years from the date the man was initially declared missing - until an official declaration of death can be obtained from the Courts.

Therefore, I urge both the Senate and House of Representatives to consider the need for taking emergency steps to solve this problem which faces the families of those brave American servicemen who have been listed as Missing in Action.

Respectfully submitted,  
DOLPH BRISCOE  
Governor of Texas

#### COMMUNICATION FROM GOVERNOR

The following communication from the Governor was read and filed with the Secretary of the Senate:

Austin, Texas  
May 23, 1973

The Honorable Mike McKinnon  
State Senator  
Capitol Station  
Austin, Texas

Dear Senator McKinnon:

At the request of Doctor Mylie E. Durham, Jr., a copy of which is attached, I am withdrawing his name from consideration for confirmation by the Senate to the Hospital Licensing Board of the State of Texas.

Best personal regards to you.

Sincerely,  
DOLPH BRISCOE  
Governor of Texas

#### HOUSE BILL 379 RE-REFERRED

On motion of Senator Longoria and by unanimous consent, H.B. 379 was withdrawn from the Committee on Natural Resources and re-referred to the Committee on Administration.

**REPORTS OF STANDING COMMITTEES**

By unanimous consent, Senator Aikin submitted the following report for the Committee on Finance:

H.B. 568 (Amended)

By unanimous consent, Senator Wallace submitted the following report for the Committee on Intergovernmental Relations:

H.B. 739 (Amended)

By unanimous consent, Senator Hightower submitted the following reports for the Committee on Administration:

H.B. 635  
H.B. 1455  
H.B. 1573  
H.B. 1651  
H.B. 645  
H.B. 1063  
H.B. 1658  
H.B. 1485  
H.B. 1640  
H.B. 1168  
H.B. 1685  
H.B. 877  
H.B. 1684  
S.C.R. 114  
H.B. 1491  
H.B. 1230  
H.B. 1482  
H.B. 735  
H.B. 865  
H.B. 1589  
H.B. 1624  
H.B. 1635  
H.B. 1629  
H.B. 835  
H.B. 1610  
H.C.R. 116  
H.C.R. 54  
H.B. 602  
H.B. 1715  
H.B. 470  
H.B. 224  
H.B. 1201  
H.B. 1444  
H.C.R. 142  
H.B. 1660  
H.B. 1588  
H.B. 337  
H.B. 762  
H.C.R. 182  
H.C.R. 168  
H.C.R. 141  
H.B. 1706  
H.B. 1688  
H.B. 1687  
H.B. 1700

H.B. 1602  
H.B. 1591  
H.B. 1555  
H.B. 1489  
H.B. 1251  
H.B. 76  
H.B. 331  
H.B. 411  
H.B. 740  
H.B. 68  
H.B. 545  
H.B. 838  
H.B. 1165  
H.B. 1422  
H.B. 1281  
H.B. 1515  
H.B. 1521  
H.B. 1648 (Amended)  
H.C.R. 99  
S.B. 989  
S.B. 993  
S.B. 992  
H.B. 257  
H.B. 118 (Amended)  
H.B. 1037  
H.B. 1570  
H.B. 1654  
H.B. 133  
C.S.H.B. 1691 (Read first time)  
H.B. 705 (Amended)  
H.B. 1574  
H.B. 1576  
H.C.R. 171  
H.C.R. 69  
H.B. 1709  
H.B. 1710  
H.B. 1696  
S.R. 836  
S.R. 827  
H.C.R. 75  
H.B. 791  
H.B. 727  
H.B. 683  
H.B. 1697  
H.B. 1674  
H.C.R. 36  
H.B. 1682  
H.B. 1730  
H.B. 1644  
H.B. 1531  
H.B. 1722  
H.C.R. 138  
H.C.R. 127  
C.S.H.B. 1686 (Read first time)  
H.B. 685  
H.B. 666



**NOTICE OF EXECUTIVE SESSION**

Senator McKinnon gave notice that he would move for an Executive Session of the Senate at 11:30 o'clock a.m. tomorrow.

**HOUSE BILL 946 ON SECOND READING**

On motion of Senator Aikin and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 946, A bill to be entitled An Act amending Chapter 16 of the Texas Education Code; declaring that this Act is not intended to alter or affect other laws or other Chapters of the Texas Education Code; providing the effective date of this Act; declaring the Act to be severable; and declaring an emergency.

The bill was read second time.

Senator Aikin offered the following Committee Amendment to the bill:

Amend H.B. 946 by striking all below the enacting clause and substituting the following:

Section 1. (a) For the 1974-75 scholastic year only, emergency grant funds shall be made available from the Foundation School Fund to certain school districts in accordance with the provisions of this section.

(b) Prior to January 1, 1974, the Legislative Property Tax Committee shall furnish the Commissioner of Education with an inventory and value of all taxable resources in each school district in the state as of the date on which the resources were assessed for the 1972 tax year.

(c)(1) For the purposes of this section "value of taxable resources" means the value of real property, tangible personal property employed in commerce or industry, and property of financial businesses as defined and determined in this subsection.

(2) Tangible personal property which by specific statutory provision is excluded from the tax base of school districts is excluded from taxable resources.

(3) In this subsection:

(A) "Real property" means that property defined by Article 7146, Revised Civil Statutes of Texas, 1925, as amended.

(B) "Commerce" means the selling, warehousing, and distributing of a commodity or service, including a utility service.

(C) "Industry" means:

(i) processing tangible personal property for sale as tangible personal property;

(ii) exploring for or producing and transporting a material extracted from the earth;

(iii) generating electricity;

(iv) constructing; and

(v) transporting persons and property by common carrier.

(4) Except as otherwise provided in this subsection, all taxable resources shall be valued at market value.

(5) The market value of business inventories is presumed to be the cost to the owner of the property.

(6) The market value of tangible personal property employed in commerce or industry, other than inventories, is presumed to be the original cost of the property less depreciation not exceeding 90 percent of the original cost.

(7) All property of banks, including shares of bank stock, shall be valued as provided in Articles 7165 and 7166, Revised Civil Statutes of Texas, 1925.

(8) All property of savings and loan associations shall be valued as provided in Section 11.09 of the Texas Savings and Loan Act (Article 852a,

Vernon's Texas Civil Statutes).

(9) All property of insurance companies shall be valued as provided in Article 4.01, Insurance Code, as amended.

(10) The property of other financial business corporations not specified in paragraphs (7), (8), and (9) of this subsection shall be valued insofar as practical in accordance with the methods authorized in paragraphs (7) and (8) of this subsection.

(11) The value of land used to support the raising of livestock or produce farm crops or forest products shall be determined on the basis of the capability of the land to support livestock or produce farm crops or forest products using accepted income capitalization methods of valuation. The valuations shall include all tangible personal property employed on the land and all improvements and structures used in connection with the land except as provided in paragraph (12). The capitalization rate shall be one percent higher than the prime interest rate in effect on the last banking day preceding the date used for assessment of property taxes in the district.

(12) Structures used for the processing of farm or forest products and residential structures which are located on land valued in accordance with the capitalization method shall be valued separately from and in addition to the land and in the same manner as similar structures wherever located.

(d) The Central Education Agency shall determine the value of all taxable resources per student in average daily attendance for the 1972-73 scholastic year in each school district and shall rank all the districts from the lowest value per student to the highest value per student. The agency shall then classify districts into quartiles of student population in average daily attendance beginning at the district with the lowest value per student. Districts in the quartile with the lowest values per student shall be eligible for emergency grant funds.

(e) Emergency grant funds determined on the basis of \$100 per student in average daily attendance less a calculated local share of 20 per \$100 of value of taxable resources shall be paid to each eligible school district from the Foundation School Fund. The grants shall be in addition to all other state payments to the districts. No district shall be required to raise the calculated local share of the emergency grant funds.

(f) A school district may use its emergency grant funds for any purpose except:

- (1) participation in the Foundation School Program;
- (2) participation in any other aid program authorized by the Texas Education Code;
- (3) building or equipping school facilities;
- (4) payment or repayment of bonded indebtedness;
- (5) payment of interest on bonded indebtedness;
- (6) extracurricular or intramural activities; or
- (7) salary supplements for administrative personnel.

Sec. 2. Before January 1, 1975, the governor shall cause to be developed a plan and all necessary legislation for consideration by the 64th Legislature which will effectively improve educational opportunities for all school children in the state and which will take into account each school district's ability to provide financial support for public school education. All state agencies and committees shall supply information and technical skills to the governor as needed.

Sec. 3. Section 2, Article 7100, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Sec. 2. DUTIES OF THE COMMITTEE. The Committee is authorized and directed:

"(1) To make a thorough inquiry into the whole process of ad valorem taxation in Texas, together with such investigation into the property tax systems of other states as the Committee deems necessary, and to recommend to the Legislature such changes or modifications of the laws of this State, and such additional laws as may to the Committee or any member thereof, seem necessary or

proper to remedy injustice in property taxation, and to facilitate the assessment and collection of ad valorem taxes in Texas.

"(2) To make a comprehensive study of the ad valorem tax laws of Texas, past and present, found in constitutional provisions, statutes, charters, ordinances, Rules of Civil Procedure, court decisions, opinions of the Attorney General and orders and regulations of the Comptroller and to prepare and submit to the Legislature and the Supreme Court of Texas a Property Tax Code of laws which shall be uniform as to all Tax Units in the State insofar as possible.

"(3) To develop a uniform data processing system for property tax levies, assessments, collections, rolls and reports and make the system available to all tax units.

"(4) To study the feasibility of establishing regional computer facilities available to all tax units or of providing a means for all tax units to use the regional computer facilities created for educational agencies under Section 11.33, Texas Education Code, or to use other computer facilities of State agencies and institutions.

"(5) To complete, verify, correct and update data on assessed valuations, tax rates, collections and delinquent taxes of all tax units in Texas as compiled by the Delinquent Ad Valorem Tax Study Commission created by Senate Concurrent Resolution No. 4, 61st Legislature, 2nd Called Session, 1969, and to obtain information on assessment ratios, bonded indebtedness and outstanding time warrants of all tax units in the State, and such other statistics on Texas property taxation as the Committee may deem relevant so that the Committee may report to the Legislature the whole amount of ad valorem taxes levied and collected by all tax units, the amount of such revenues which may be lost through failure to make proper levies, assessments and collections and the causes of such losses, and such other matters concerning the property tax in Texas as the Committee, or any member thereof, may deem to be of public interest.

"(6) To examine all books, papers, and accounts and to interrogate under oath, or otherwise, any and all persons whom said Committee or any member thereof, may desire to examine for the purpose of obtaining or acquiring any information that may in any way aid in securing a compliance with any property tax law in this State by any and all persons, companies, corporations or associations liable to ad valorem taxation under any law in this State, which is now in force, or which may hereafter be enacted.

"(7) To develop prior to June 1, 1974, an official ad valorem tax appraisal manual, including a current building cost schedule, for use by all school district assessing officials.

"(8) To adopt prior to January 1, 1975, a uniform geographic code system which will accurately reflect current information on the division and ownership of all real property in each school district in order to insure that all real property is placed on the tax rolls.

"(9) To develop prior to January 1, 1974, an orderly plan for determining the value of all taxable resources in each school district of the state which would permit a new method for the determination of each school district's ability to support public education in lieu of the present method set forth in Subchapter G of Chapter 16 of the Texas Education Code."

Sec. 4. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of the conflict.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Committee Amendment was read.

(Senator McKnight in Chair)

Senator Aikin moved to table the amendment.

(President in Chair)

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table was lost by the following vote: Yeas 8, Nays 23.

Yeas: Aikin, Brooks, Harrington, Hightower, Kothmann, Patman, Traeger and Wolff.

Nays: Adams, Andujar, Blanchard, Braecklein, Clower, Creighton, Gammage, Harris, Herring, Jones, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson and Wallace.

Senator Wallace offered the following amendment to the Committee Amendment to the bill:

Amend the Committee Amendment to H.B. 946 by striking therefrom all of Section 1,(c)(11) and Section 1,(c)(12) and substituting in lieu thereof the following:

"(11) all real property subject to taxation under state law, provided however that real property qualifying under the provisions of Article 8, Section 1-d, of the Texas Constitution, shall be included in tax assessor-collector reports at the value derived under the provisions thereof;"

The amendment to the Committee Amendment was read.

Question on the adoption of the amendment to the Committee Amendment, "Yeas" and "Nays" were demanded.

The amendment to the Committee Amendment failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Adams, Aikin, Brooks, Gammage, Harrington, Longoria, Mauzy, Meier, Santiesteban, Wallace and Wolff.

Nays: Andujar, Blanchard, Braecklein, Clower, Creighton, Harris, Herring, Hightower, Jones, Kothmann, McKinnon, McKnight, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Snelson and Traeger.

Senator Blanchard offered the following amendment to the Committee Amendment to the bill:

Amend Committee Amendment No. 1 to H.B. 946 by adding a new Section to be numbered Subsection 1(b)(1) to read as follows:

"The unexpended balances of funds deposited in the State Treasury for the use of the Legislative Property Tax Committee are hereby reappropriated to said Committee."

The amendment to the Committee Amendment was read and was adopted.

### RECORD OF VOTES

Senators Aikin, Herring, Harrington, Brooks, Braecklein, Adams, Creighton, Moore, Ogg, Mengden, Sherman and Gammage asked to be recorded as voting "Nay" on the adoption of the amendment to the Committee Amendment.

Question, Shall the Committee Amendment as amended be adopted?

**VOTE ON FINAL PASSAGE OF HOUSE BILL 1585 RECONSIDERED**

On motion of Senator Schwartz and by unanimous consent, the vote by which H.B. 1585 was finally passed was reconsidered.

Question, Shall H.B. 1585 be finally passed?

The bill was again finally passed.

**SENATE BILL 822 WITH HOUSE AMENDMENT**

Senator Schwartz called S.B. 822 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**AMENDMENT 1**

Amend Section 2 to read as follows:

"Section 2. The boundary lines of all such cities and towns, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof by annexation are hereby in all things validated; provided however, that no provisions of this Act shall validate any boundary line extended by annexation, which extends into or through the extraterritorial jurisdiction (as that term is defined by Article 970a, Vernon's Texas Civil Statutes) of any other city or town."

The House amendment was read.

Senator Schwartz moved to concur in House amendment.

The motion prevailed.

**MESSAGE FROM GOVERNOR**

The following Message from the Governor was read and referred to the Committee on State Affairs, Sub-committee on Nominations.

Austin, Texas  
May 23, 1973

**TO THE SENATE OF THE SIXTY-THIRD LEGISLATURE, REGULAR SESSION:**

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

**TO BE A MEMBER OF THE TEXAS AERONAUTICS COMMISSION:**

For a six-year term to expire December 31, 1976:

Mr. C. T. Matthew of Yoakum, DeWitt County, to replace Mr. Joe Christie of El Paso, El Paso County, who resigned.

Respectfully submitted,  
**DOLPH BRISCOE**  
Governor of Texas

**BILLS AND RESOLUTIONS SIGNED**

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled bills and resolutions:

S.C.R. 117	S.B. 782
S.C.R. 118	S.B. 831
S.B. 51	S.B. 889
S.B. 66	S.B. 899
S.B. 188	S.B. 906
S.B. 205	S.B. 920
S.B. 256	S.B. 937
S.B. 298	S.B. 942
S.B. 356	S.B. 945
S.B. 401	S.B. 946
S.B. 448	H.B. 59
S.B. 449	H.B. 723
S.B. 450	H.B. 1056
S.B. 485	H.B. 1448
S.B. 499	H.B. 1506
S.B. 529	H.B. 1594
S.B. 613	H.B. 1630
S.B. 708	H.B. 1642
S.B. 781	

**RECESS**

On motion of Senator Aikin the Senate at 11:55 o'clock a.m. took recess until 1:30 o'clock p.m. today.

**After Recess**

Senator Herring called the Senate to order at 1:30 o'clock p.m. today.

**MESSAGE FROM THE HOUSE**

Hall of the House of Representatives  
Austin, Texas, May 23, 1973

Honorable William P. Hobby  
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 52, A bill to be entitled An Act amending the Judicial District Acts of 1969; etc.; and declaring an emergency. (With amendments)

S.B. 121, A bill to be entitled An Act relating to bilingual education programs in the public schools; amending Chapter 21, Texas Education Code, by adding Subchapter L; amending Section 21.109, Texas Education Code; and declaring an emergency. (With amendments)

S.B. 369, A bill to be entitled An Act relating to the disposition of fines assessed for violation of pharmacy laws; amending Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended, by adding Section 21a; and declaring an emergency.

S.B. 34, A bill to be entitled An Act reforming the penal law; enacting a new Penal Code setting out general principles, defining offenses, and affixing punishments, making necessary conforming amendments to outside law; repealing replaced law; and declaring an emergency. (With amendments)

S.B. 302, A bill to be entitled An Act relating to the powers and duties of the State Board of Registration for Public Surveyors; etc.; and declaring an emergency. (With amendments)

S.B. 471, A bill to be entitled An Act relating to the establishment of a community senior citizens employment program under the Governor's Committee on Aging; amending Chapter 320, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 695k, Vernon's Texas Civil Statutes), by adding a Section 5a; and declaring an emergency.

The House has laid Senate Bill 348 on the table subject to call.

Respectfully submitted,  
DOROTHY HALLMAN  
Chief Clerk, House of Representatives

(President in Chair)

#### HOUSE BILL 946 ON SECOND READING

The Senate resumed consideration of the pending business, same being H.B. 946 on its second reading and passage to third reading with a Committee Amendment pending.

Question, Shall the Committee Amendment as amended be adopted?

Senator Brooks offered the following amendment to the Committee Amendment to the bill:

Amend Committee Amendment No. 1 to H.B. 946 by inserting a new section to be identified as Section 4, and by renumbering subsequent sections accordingly, with the new Section 4 to read as follows:

"Section 4. Nothing in this Act shall be construed to authorize the State Board of Education or the Central Education Agency to divert funds from the comprehensive special education program established under Section 16.16 of the Texas Election Code."

The amendment to the Committee Amendment was read.

Question on adoption of the amendment to the Committee Amendment, "Yeas" and "Nays" were demanded.

The amendment to the Committee Amendment was adopted by the following vote: Yeas 26, Nays 0.

Yeas: Adams, Aikin, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Mengden, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Absent: Andujar, Harrington, Meier, Moore and Santiesteban.

Senator Traeger offered the following amendment to the Committee

Amendment to the bill:

Amend Floor Amendment No. 1 to H.B. 946 in the following manner:

On page 7, line 11 of this same paragraph (9) add a period after the word "education", and delete the words "in lieu of the present method set forth in Subchapter G of Chapter 16 of the Texas Education Code."

The amendment was read and was adopted.

**VOTE BY WHICH AMENDMENT BY SENATOR WALLACE TO  
HOUSE BILL 946 FAILED OF ADOPTION RECONSIDERED**

Senator Clower moved to reconsider the vote by which the amendment by Senator Wallace to H.B. 946 failed of adoption (he having voted on the prevailing side).

(Senator Blanchard in Chair)

Question on the motion to reconsider, "Yeas" and "Nays" were demanded.

The motion to reconsider the vote by which the amendment by Senator Wallace to H.B. 946 failed of adoption prevailed by the following vote: Yeas 23, Nays 6.

Yeas: Adams, Aikin, Blanchard, Braecklein, Brooks, Clower, Gammage, Harris, Herring, Hightower, Jones, Longoria, Mauzy, McKinnon, McKnight, Meier, Moore, Santiesteban, Schwartz, Sherman, Traeger, Wallace and Wolff.

Nays: Andujar, Creighton, Kothmann, Mengden, Patman and Snelson.

Absent: Harrington and Ogg.

(President in Chair)

Question, Shall the amendment by Senator Wallace to H.B. 946 be adopted?

The amendment was adopted by the following vote: Yeas 20, Nays 10.

Yeas: Adams, Aikin, Blanchard, Brooks, Clower, Gammage, Harris, Herring, Hightower, Longoria, Mauzy, McKnight, Meier, Moore, Ogg, Santiesteban, Schwartz, Traeger, Wallace and Wolff.

Nays: Andujar, Braecklein, Creighton, Jones, Kothmann, McKinnon, Mengden, Patman, Sherman and Snelson.

Absent: Harrington.

The Committee Amendment as amended was then adopted.

**VOTE ON ADOPTION OF COMMITTEE AMENDMENT AS  
AMENDED TO HOUSE BILL 946 RECONSIDERED**

On motion of Senator Schwartz and by unanimous consent, the vote by which the Committee Amendment as amended to H.B. 946 was adopted was reconsidered.

Question, Shall the Committee Amendment as amended to H.B. 946 be adopted?

Senator Schwartz offered the following amendment to the Committee



Amendment to the bill:

Amend the Committee Amendment by striking Subsection (a) of Section 1 thereof and relettering the subsequent sections.

The amendment to the Committee Amendment was read and was adopted.

#### **RECORD OF VOTES**

Senators Creighton and Jones asked to be recorded as voting "Nay" on the adoption of the amendment to the Committee Amendment.

The Committee Amendment as amended was then again adopted.

On motion of Senator Aikin and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

#### **RECORD OF VOTES**

Senators Adams, Jones, Creighton and Mengden asked to be recorded as voting "Nay" on the passage of the bill to third reading.

#### **HOUSE BILL 946 ON THIRD READING**

Senator Aikin moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 946 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Gammage, Harrington, Herring, Hightower, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Creighton, Harris, Jones, Mengden and Moore.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

#### **RECORD OF VOTES**

Senators Moore, Harris, Adams, Creighton, Jones and McKnight asked to be recorded as voting "Nay" on the final passage of the bill.

#### **CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 8 ADOPTED**

Senator Gammage called from the President's Table the Conference Committee Report on S.J.R. 8. (The Conference Committee Report having been filed with the Senate on May 22.)

On motion of Senator Gammage, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower,

Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Absent: Moore.

### **SENATE BILL 121 WITH HOUSE AMENDMENTS**

Senator Brooks called S.B. 121 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **AMENDMENT NO. 1**

Amend S.B. 121, Section 21.109, by striking subsection (b), and substituting the following:

"(b) It is the policy of this state to insure the mastery of English by all pupils in the schools; provided that bilingual instruction may be offered or permitted in those situations when such instruction is necessary to insure their reasonable efficiency in the English language so as not to be educationally disadvantaged."

#### **AMENDMENT NO. 2**

Amend S.B. 121, page 7, by adding a subparagraph between "c" and "Sec. 2":

"d. The cost of funding this Act shall, for Fiscal Years 1974 and 1975, be maintained at the level contained in H.B. 139, 63rd Regular Session."

#### **AMENDMENT NO. 3**

Amend S.B. 121, Section 21.453, by striking subsection (b) and substituting the following:

"(b) Beginning with the 1974-75 scholastic year, each school district which has an enrollment of 20 or more children of limited English-speaking ability in any language classification in the same grade level during the preceding scholastic year, and who does not have a program of bilingual instruction which accomplishes the state policy set out in Section 21.451 of this Act, shall institute a program of bilingual instruction for the children in each language classification commencing in the first grade, and shall increase the program by one grade each year until bilingual instruction is offered in each grade up to the sixth. The board may establish a program with respect to a language classification with less than 20 children."

The House amendments were read.

Senator Brooks moved to concur in House amendments.

The motion prevailed.

### **MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and filed with the Secretary of the Senate:

Austin, Texas  
May 23, 1973

**TO THE MEMBERS OF THE SIXTY-THIRD LEGISLATURE, REGULAR  
SESSION:**

Pursuant to the provisions of Section 5, Article III of the Constitution of the State of Texas, I herewith submit as an emergency matter the following:

Senate Bill 966 relating to financing the 1974 primary elections.

In 1972 the United States Supreme Court, in the case of *Bullock V. Carter*, declared unconstitutional those portion of the Texas Election Code which dealt with financing of primary elections in Texas. A special session of the 62nd Legislature was called and a bill was passed to provide for financing the 1972 primary elections. That bill pertained only to the 1972 elections, thus; there is no present valid law which provides for financing of future primary elections.

I realize there are differences of opinion about the methods and manner of financing and conducting primary elections; however, I feel it is imperative that the importance of passing some type of primary financing bill be brought to the attention of each member of the Legislature.

There is presently before the House of Representatives, Senate Bill 966 which provides a means of financing the 1974 primary elections. This bill is very similar to the bill passed by the 62nd Legislature for financing the 1972 elections. I cannot over emphasize the importance of passing Senate Bill 966. Otherwise, Texas will still be without a valid law for financing primary elections.

I urge the Legislature to give immediate consideration to passage of Senate Bill 966, so that the Regular Session of the 63rd Legislature will not end without providing a means for financing the 1974 primary elections.

Respectfully submitted,  
DOLPH BRISCOE  
Governor of Texas

**COMMITTEE SUBSTITUTE HOUSE BILL 83  
ON THIRD READING**

Senator Adams moved to suspend the regular order of business and take up C.S.H.B. 83 for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 4.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Kothmann, Longoria, Mauzy, McKinnon, Meier, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Wallace and Wolff.

Nays: Jones, McKnight, Mengden and Traeger.

Absent: Blanchard and Moore.

The President laid before the Senate on its third reading and final passage:

C.S.H.B. 83, A bill to be entitled An Act giving financial relief to part-time and graduate students enrolled in state-supported institutions of higher education; etc.; and declaring an emergency.

The bill was read third time and was passed.

**RECORD OF VOTES**

Senators Traeger, Mengden, Meier, McKnight, McKinnon, Ogg, Jones, and Blanchard asked to be recorded as voting "Nay" on the final passage of the bill.

**HOUSE JOINT RESOLUTION 6  
ON SECOND READING**

On motion of Senator Sherman and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 6, Proposing an amendment to Article III, Section 49-B, of the Texas Constitution, as amended, to provide for an additional \$100 million in bonds or obligations of the State of Texas for the Veterans' Land Fund.

The resolution was read second time and was passed to third reading.

**HOUSE JOINT RESOLUTION 6  
ON THIRD READING**

Senator Sherman moved that the Constitutional Rule and Senate Rule 68 requiring resolutions to be read on three several days be suspended and that H.J.R. 6 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

The President then laid the resolution before the Senate on its third reading and final passage.

The resolution was read third time and was passed by the following vote:

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

**HOUSE BILL 1463 ON SECOND READING**

Senator Sherman asked unanimous consent to suspend the regular order of business and take up H.B. 1463 for consideration at this time.

There was objection.

Senator Sherman then moved to suspend the regular order of business and take up H.B. 1463 for consideration at this time.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Blanchard.

The President laid before the Senate on its second reading and passage to third reading:

H.B. 1463, A bill to be entitled An Act relating to the establishment of a Veterinary Medical Diagnostic Laboratory at West Texas State University; etc.; and declaring an emergency.

The bill was read second time.

Senator Moore offered the following amendment to the bill:

Amend H.B. 1463, as engrossed, by striking all below the enacting clause and substituting the following:

"Section 1. There is hereby created and established a laboratory of the Texas Veterinary Medical Diagnostic Laboratory to be located by the Board of Directors of the Texas A and M University System in Randall or Potter County on land made available to or acquired by the Board. Equipping of the building to house the laboratory and related animal building is authorized.

"Sec. 2. There is hereby appropriated to the Texas Veterinary Medical Diagnostic Laboratory from the general revenue fund the sum of \$950,000.00 for the year ending August 31, 1974, for the planning, construction, equipping, maintenance and other expenses of the buildings provided for herein. The unobligated balance of the sum herein appropriated is appropriated for the same purpose for the year ending August 31, 1975.

"Sec. 3. The fact that there is an urgent need for a veterinary medical diagnostic laboratory to serve the people in the Plains area of Texas creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

The amendment was read and was adopted.

Senator Moore offered the following amendment to the bill:

Amend H.B. No. 1463, as engrossed, by striking all above the enacting clause and substituting the following:

#### **"A BILL**

#### **TO BE ENTITLED**

An Act creating and establishing a laboratory of the Texas Veterinary Medical Diagnostic Laboratory to be located by the Board of Directors of The Texas A and M University System in Randall or Potter County on land made available to or acquired by the Board; authorizing the equipping of the laboratory building and related animal building; appropriating funds therefor; and declaring an emergency."

The amendment was read and was adopted.

The bill as amended was passed to third reading.

#### **HOUSE BILL 1463 ON THIRD READING**

Senator Sherman moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 1463 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Blanchard.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

### RECORD OF VOTES

Senators Longoria, Herring and Blanchard asked to be recorded as voting "Nay" on the final passage of the bill.

### HOUSE BILL 990 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 990, A bill to be entitled An Act amending Acts 1965, 59th Legislature, Chapter 168, as amended, authorizing the commissioners court of counties with a population in excess of 900,000 inhabitants according to the most recent federal census to provide for the increase in tax for the payment of bonds issued pursuant to such act from one cent per \$100 of taxable property to two and one-half cents per \$100 of taxable property; providing for severability; and declaring an emergency.

The bill was read second time and was passed to third reading.

### HOUSE BILL 990 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 990 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Clower.

### HOUSE JOINT RESOLUTION 7 ON SECOND READING

On motion of Senator Meier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.J.R. 7, Proposing amendments to Article XVI, Sections 50 and 51, of the Texas State Constitution, to include within the scope of homestead protection the real property of a single adult person which meets the other requirements of homestead property, and to provide that a family homestead may not be abandoned except with the consent of both spouses.

The resolution was read second time.

Senator Meier offered the following Committee Amendment to the resolution:

Amend Sec. 3, line 23, by substituting "1973" in lieu of "1974".

The Committee Amendment was read and was adopted.

The resolution as amended was passed to third reading.

### HOUSE JOINT RESOLUTION 7 ON THIRD READING

Senator Meier moved that the Constitutional Rule and Senate Rule 68 requiring resolutions to be read on three several days be suspended and that H.J.R. 7 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

The President then laid the resolution before the Senate on its third reading and final passage.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

(Senator Herring in Chair)

### SENATE BILL 795 RE-REFERRED

Senator Gammage asked unanimous consent that S.B. 795 be withdrawn from the Committee on Education and re-referred to the Committee on Administration.

There was objection.

Senator Gammage then moved that H.B. 795 be withdrawn from the Committee on Education and re-referred to the Committee on Administration.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Adams, Aikin, Braecklein, Brooks, Clower, Gammage, Harrington, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, Meier, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Andujar, Blanchard, Creighton, McKnight, Mengden and Moore.

Absent: Harris.

#### **REPORT OF STANDING COMMITTEE**

By unanimous consent, Senator Moore submitted the following report for the Committee on State Affairs.

C.S.H.B. 4 (Read first time)

#### **HOUSE BILL 103 RE-REFERRED**

On motion of Senator Hightower and by unanimous consent, H.B. 103 was withdrawn from the Committee on Human Resources and re-referred to the Committee on Administration.

#### **MOTION TO PLACE HOUSE BILL 316 ON SECOND READING**

Senator Gammage asked unanimous consent to suspend the regular order of business and take up H.B. 316 for consideration at this time.

There was objection.

Senator Gammage then moved to suspend the regular order of business and take up H.B. 316 for consideration at this time.

(President in Chair)

The motion was lost by the following vote: Yeas 7, Nays 17, Present-Not voting 6.

Yeas: Aikin, Brooks, Gammage, Harrington, Mauzy, Santiesteban and Wallace.

Nays: Adams, Andujar, Blanchard, Creighton, Herring, Hightower, Jones, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Sherman, Traeger and Wolff.

Present-Not voting: Braecklein, Clower, Kothmann, Longoria, Schwartz and Snelson.

Absent: Harris.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 64 ON SECOND READING**

On motion of Senator Blanchard and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 64, A bill to be entitled An Act amending Article 5.03,



Insurance Code, as amended; providing that insurers shall not issue or renew motor vehicle insurance policies at premium rates greater or lesser than those rates promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, with certain exceptions; providing the procedures whereby insurers may obtain Board approval to write motor vehicle insurance at rates and classifications different from those promulgated by the Board; setting up procedures for the revocation, suspension, and automatic termination of such approved lesser or greater rates; relating to approval or denial of rate applications and use of rates; containing a severability clause; providing for the resolution of ambiguities and conflicts; providing for control of conflicts with other laws; and declaring an emergency.

The bill was read second time and was passed to third reading.

### RECORD OF VOTES

Senators Adams and Ogg asked to be recorded as voting "Nay" on the passage of the bill to third reading.

### COMMITTEE SUBSTITUTE HOUSE BILL 64 ON THIRD READING

Senator Blanchard moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 64 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Yeas: Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Adams.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

Yeas: Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

Nays: Adams and Ogg.

### BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled bills and resolutions:

H.C.R. 101	H.B. 808
H.C.R. 187	H.B. 915
H.B. 50	H.B. 958
H.B. 177	H.B. 1022
H.B. 171	H.B. 1409
H.B. 277	H.B. 1457
H.B. 367	H.B. 1582

H.B. 463  
H.B. 492  
H.B. 607  
H.B. 731  
H.B. 805

H.B. 1596  
H.B. 1634  
H.B. 1637  
H.B. 1641  
H.B. 1694

### MESSAGE FROM THE HOUSE

Hall of the House of Representatives  
Austin, Texas, May 23, 1973

Honorable William P. Hobby  
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 363 was read second time and failed to pass to third reading by a record vote of 28 Ayes, 110 Noes, and 3 Present-Not voting.

All necessary rules suspended, and the Conference Committee Report on Senate Bill 807 adopted by a non-record vote.

S.C.R. 121: Instructing the Conference Committee for Senate Bill 807.  
(With amendment)

Respectfully submitted,  
DOROTHY HALLMAN  
Chief Clerk, House of Representatives

### SENATE BILL 52 WITH HOUSE AMENDMENTS

Senator Mauzy called S.B. 52 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

### AMENDMENT NO. 1

Amend S.B. 52 by striking all below the enacting clause substituting the following:

Section 1. Subchapter C. Judicial Districts Act of 1969, as amended (Article 199a, Vernon's Texas Civil Statutes) is amended by adding Sections 3.030-3.032 to read as follows:

"Section 3.030. (a) The 203rd Judicial District, composed of the County of Dallas, is hereby created.

"(b) The 203rd District Court shall give preference to criminal cases.

"Section 3.031. (a) The 204th Judicial District, composed of the County of Dallas, is hereby created.

"(b) The 204th District Court shall give preference to criminal cases.

"Section 3.032. (a) The 205th Judicial District, composed of the County of El Paso, is hereby created.

"(b) The 205th District Court shall give preference to criminal cases."

Sec. 2. Subchapter C, Judicial Districts Act of 1969, as amended (Article 199a, Vernon's Texas Civil Statutes) is amended by adding Sections 3.034-3.036 to read as follows:

"Section 3.034. The 206th Judicial District, composed of the County of Hidalgo, is hereby created.

"Section 3.035. The 207th Judicial District, composed of the County of Tarrant, is hereby created.

"Section 3.036. (a) The 208th Judicial District, composed of the counties of Comal, Hays, and Caldwell, is hereby created.

"(b) The 208th District Court shall give preference to criminal cases."

Sec. 3. Subchapter C, Judicial Districts Act of 1969, as amended (Article 199a, Vernon's Texas Civil Statutes) is amended by adding Sections 3.037-3.040 to read as follows:

"Section 3.037. (a) The 209th Judicial District, composed of the County of Harris, is hereby created.

"(b) The 209th District Court shall give preference to criminal cases.

"Section 3.038. (a) The 210th Judicial District, composed of the County of Harris, is hereby created.

"(b) The 210th District Court shall give preference to criminal cases.

"Section 3.039. The 211th Judicial District, composed of the County of El Paso, is hereby created.

"Section 3.040. The 212th Judicial District, composed of the County of Denton, is hereby created."

Sec. 4. Subchapter C, Judicial Districts Act of 1969, as amended (Article 199a, Vernon's Texas Civil Statutes) is amended by adding Sections 3.041-3.043 to read as follows:

"Section 3.041. (a) The 213th Judicial District, composed of the County of Galveston, is hereby created.

"(b) The 213th District Court shall give preference to criminal cases.

"Section 3.042. The 214th Judicial District, composed of the County of Tarrant, is hereby created.

"Section 3.043. (a) The 215th Judicial District, composed of the County of Nueces, is hereby created.

"(b) The 215th District Court shall give preference to criminal cases."

Sec. 5. (a) The provisions of Sections 1 and 2 of this Act take effect September 1, 1973.

(b) The provisions of Section 3 of this Act take effect January 1, 1974.

(c) The provisions of Section 4 of this Act take effect January 1, 1975.

Sec. 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### **AMENDMENT NO. 2**

Amend Hale amendment to S.B. 52 by striking all of Subsection (b) of Section 3.036 in Section 2 of the bill, and substituting the following:

"(b) The 208th District Court shall have the same jurisdiction in Comal County as the 22nd District Court has in Comal County and shall give preference to criminal cases in Caldwell, Comal, and Hays Counties."

#### **AMENDMENT NO. 3**

Amend S.B. 52 by striking all above the enacting clause and substituting the following:

**"A BILL**

**TO BE ENTITLED**

An Act relating to the creation of certain new judicial districts; amending

Subchapter C, Judicial Districts Act of 1969, as amended (Article 199a, Vernon's Texas Civil Statutes) by adding Sections 3.030-3.032 and Sections 3.034-3.043; providing effective dates; and declaring an emergency."

#### AMENDMENT NO. 4

Amend S.B. 52 by adding a new Section 3.045 to read as follows and a new Section 5 and renumber Section 5 as Section 6 as follows:

"Section 3.045.

"(a) The 217th Judicial District composed of Bandera, Gillespie, Kendall, Kerr, Kimble, and Sutton Counties is hereby created.

"(b) All cases and proceedings pending on the effective date of this Act in the 2nd 38th District Court in Bandera, Gillespie, Kendall, Kerr and Kimble Counties shall be transferred to the 217th District Court. All process and writs issued for the 2nd 38th District Court are hereby made returnable to the 217th District Court. The obligees in all bonds and recognizances taken in and for the 2nd 38th District and all witnesses summoned to appear before the 2nd 38th District Court are required to appear before the 217th District Court as directed by the 217th District Court but not at a time earlier than originally required.

"(c) The judge and district attorney of the 2nd 38th Judicial District shall serve as judge and district attorney respectively of the 217th Judicial District until the next general election following the effective date of this act and until their successors are elected and have qualified.

"Sec. 5. The 2nd 38th Judicial District is abolished. Section 2, Chapter 337, Acts of the 54th Legislature, Regular Session, 1955 is repealed."

The House amendments were read.

Senator Mauzy moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 52 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following Conferees on the part of the Senate on the bill: Senators Mauzy, Ogg, Meier, Wolff and Schwartz.

#### HOUSE BILL 1536 RE-REFERRED

On motion of Senator Brooks and by unanimous consent, H.B. 1536 was withdrawn from the Committee on State Affairs and re-referred to the Committee on Administration.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1067

Senator Aikin submitted the following Conference Committee Report:

Austin, Texas  
May 22, 1973

The Honorable William P. Hobby  
President of the Senate

Honorable Price Daniel, Jr.  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 1067 have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HERRING  
AIKIN  
HARRIS  
SCHWARTZ  
CREIGHTON  
On the part of the Senate

KUBIAK  
FINNEY  
BYNUM  
COBB  
HOESTENBACH  
On the part of the House

The Conference Committee Report was read and filed with the Secretary of the Senate.

**SENATE CONCURRENT RESOLUTION 121  
WITH HOUSE AMENDMENT**

Senator Gammage called S.C.R. 121 from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

**AMENDMENT NO. 1**

Amend the first resolving clause to read as follows:

"RESOLVED, by the Senate of the State of Texas, the House of Representatives concurring, that pursuant to Joint Rule 33, Joint Rule 28 is suspended to permit the Conference Committee authority to insert new subsections (a-5) and (2) to Sections 1, 2, 3 and 4 to read as follows:"

The House amendment was read.

Senator Gammage moved to concur in House amendment.

The motion prevailed.

**COMMITTEE SUBSTITUTE HOUSE BILL 200  
ON SECOND READING**

Senator Ogg asked unanimous consent to suspend the regular order of business and take up C.S.H.B. 200 for consideration at this time.

There was objection.

Senator Ogg then moved to suspend the regular order of business and take up C.S.H.B. 200 for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 3, Present-Not voting 1.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Harris, Herring, Hightower, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Wolff.

Nays: Gammage, Mauzy and Wallace.

Present-Not voting: Santiesteban.

Absent: Harrington.

The President laid before the Senate on its second reading and passage to third reading:

C.S.H.B. 200, A bill to be entitled An Act relating to the punishment for murder under certain circumstances and conditions; repealing Article 1257, Penal Code of Texas, 1925, as amended; and declaring an emergency.

The bill was read second time.

Senator Ogg offered the following amendment to the bill:

Amend H.B. No. 200 by striking all below the enacting clause and substituting the following:

Section 1. Article 1257, Penal Code of Texas, 1925, as amended, is amended to read as follows:

"Article 1257. Punishment for murder

"(a) Except as provided in Subsection (b) of this Article, the punishment for murder shall be confinement in the penitentiary for life or for any term of years not less than two.

"(b) The punishment for murder shall be death if:

"(1) the person murdered a peace officer or fireman who was acting in the lawful discharge of an official duty with the knowledge that the deceased was a peace officer or fireman and that he was engaged in his official duties as a peace officer or fireman;

"(2) the person committed the murder for remuneration or the promise of remuneration;

"(3) the person, while incarcerated in a penal institution, murdered another who was employed in the operation of the penal institution while escaping or attempting to escape;

"(4) the person intentionally committed the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, forcible rape, or arson.

"(c) If the jury finds beyond a reasonable doubt the defendant guilty of murder and finds that the murder was committed under one of the circumstances or conditions enumerated in Subsection (b) of this Article, the court shall sentence the defendant to death.

"(d) If the jury does not find beyond a reasonable doubt that the murder was committed under one of the circumstances or conditions enumerated in Subsection (b) of this Article, the defendant may be punished for murder under Subsection (a) of this Article.

"(e) In this Article:

"(1) 'Penal institution' means an institution operated by or under the

supervision of the Texas Department of Corrections or a city, county, or regional jail.

"(2) 'Peace officer' means a person defined as such by Article 2.12, Code of Criminal Procedure, 1965.

"(f) Prospective jurors for a case in which death is sought shall be informed that a sentence of death is mandatory upon a finding of murder committed under one of the circumstances enumerated in Subsection (b) of this Article. Each party shall have the right to question prospective jurors concerning bias or prejudice for or against the infliction of the death penalty. A prospective juror shall be disqualified from serving as a juror if he has bias or prejudice for or against the infliction of the death penalty which would affect his determination of any material issue of fact."

Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Meier moved to table the amendment.

Question on the motion to table, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote: Yeas 20, Nays 9.

Yeas: Aikin, Andujar, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Kothmann, Mauzy, McKinnon, McKnight, Meier, Schwartz, Sherman, Snelson, Wallace and Wolff.

Nays: Adams, Blanchard, Braecklein, Jones, Mengden, Ogg, Patman, Santiesteban and Traeger.

Absent: Longoria and Moore.

Senator Meier offered the following amendment to the bill:

Amend the Committee Substitute for H.B. 200 by striking all below the enacting clause and substituting the following:

#### **Article I**

Section 1. Article 1257, Penal Code of Texas, 1925, as amended, is amended to read as follows:

"Article 1257. Punishment for murder

"(a) Except as provided in Subsection (b) of this Article, the punishment for murder shall be confinement in the penitentiary for life or for any term of years not less than two.

"(b) The punishment for murder with malice aforethought shall be death or imprisonment for life if:

"(1) the person murdered a peace officer or fireman who was acting in the lawful discharge of an official duty and who the defendant knew was a peace officer or fireman;

"(2) the person intentionally committed the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, forcible rape, or arson;

"(3) the person committed the murder for remuneration or the promise of remuneration;

"(4) the person committed the murder while escaping or attempting to escape from a penal institution;

"(5) the person, while incarcerated in a penal institution, murdered another who was employed in the operation of the penal institution.

"(c) If the jury does not find beyond a reasonable doubt that the murder was committed under one of the circumstances or conditions enumerated in Subsection (b) of this Article, the defendant may be convicted of murder, with or without malice, under Subsection (a) of this Article or of any other lesser included offense.

"(d) If one of the circumstances or conditions enumerated in Subsection (b) of this Article is charged in an indictment, the prospective jurors shall be informed that a sentence of either death or imprisonment for life is mandatory on conviction for the offense charged. No person is qualified to serve as a juror unless he states under oath that the mandatory penalty of death or imprisonment for life will not affect his deliberations on any issue of fact.

"(e) In this Article:

"(1) 'Penal institution' means an institution operated by or under the supervision of the Texas Department of Corrections or a city, county, or regional jail.

"(2) 'Peace officer' means a person defined as such by Article 2.12, Code of Criminal Procedure, 1965, as amended.

"(3) 'Fireman' means a person employed or engaged by the state or a county, city, municipality, or public subdivision in connection with the fighting or extinguishing of fires."

## Article 2

Section 1. Chapter 19 of the Penal Code is amended to read as follows:

### "CHAPTER 19. CRIMINAL HOMICIDE

"Sec. 19.01. TYPES OF CRIMINAL HOMICIDE. (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

"(b) Criminal homicide is murder, capital murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

"Sec. 19.02. MURDER. (a) A person commits an offense if he:

"(1) intentionally or knowingly causes the death of an individual;

"(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

"(3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

"(b) An offense under this section is a felony of the first degree.

"Sec. 19.03. CAPITAL MURDER. (a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

"(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

"(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;

"(3) the person commits the murder for remuneration or the promise of remuneration;

"(4) the person commits the murder while escaping or attempting to escape from a penal institution; or

"(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution.

"(b) For purposes of this section 'fireman' means a person employed by a



government for the purpose of fighting or extinguishing fires.

"(c) An offense under this section is a capital felony.

"(d) If the jury does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

"Sec. 19.04. **VOLUNTARY MANSLAUGHTER.** (a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

"(b) 'Sudden passion' means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

"(c) 'Adequate cause' means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

"(d) An offense under this section is a felony of the second degree.

"Sec. 19.05. **INVOLUNTARY MANSLAUGHTER.** (a) A person commits an offense if he:

"(1) recklessly causes the death of an individual; or

"(2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

"(b) For purposes of this section, 'intoxication' means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

"(c) An offense under this section is a felony of the third degree.

"Sec. 19.06. **EVIDENCE.** In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

"Sec. 19.07. **CRIMINALLY NEGLIGENT HOMICIDE.** (a) A person commits an offense if he causes the death of an individual by criminal negligence.

"(b) An offense under this section is a Class A misdemeanor."

Sec. 2. Subchapter C, Chapter 12, Penal Code, is amended to read as follows:

#### **"SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS**

"Sec. 12.31. **CAPITAL FELONY.** (a) An individual adjudged guilty of a capital felony shall be punished by confinement in the Texas Department of Corrections for life or by death.

"(b) Prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. A prospective juror shall be disqualified from serving as a juror unless he states under oath that the mandatory penalty of death or imprisonment for life will not affect his deliberations on any issue of fact.

"Sec. 12.32. **FIRST-DEGREE FELONY PUNISHMENT.** An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than 5 years.

"Sec. 12.33. **SECOND-DEGREE FELONY PUNISHMENT.** (a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 20 years or less than 2 years.

"(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

"Sec. 12.34. **THIRD-DEGREE FELONY PUNISHMENT.** (a) An

individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 10 years or less than 2 years.

"(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$5,000."

Sec. 3. Section 12.04, Penal Code, is amended to read as follows:

"Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into four categories:

"(1) capital felonies;

"(2) felonies of the first degree;

"(3) felonies of the second degree;

"(4) felonies of the third degree.

"(b) An offense designated a felony in this code without specification as to category is a felony of the third degree."

### Article 3

Section 1. The Code of Criminal Procedure, 1965, is amended by adding Article 37.071 to read as follows:

"Article 37.071. PROCEDURE IN CAPITAL CASE. (a) Upon a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted in the trial court before the trial jury, unless waived, as soon as practicable. If the trial jury has been waived or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury empaneled for that purpose unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in Subsections (e) and (f) of this section. Any evidence that the court deems to have probative value may be admitted, regardless of its admissibility under the exclusionary rules of evidence, but the defendant shall be accorded a fair opportunity to rebut any hearsay statements. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

"(b) If before a jury, after hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court as to whether the defendant should be sentenced to life or death based upon the following matters:

"(1) whether sufficient aggravating circumstances exist as enumerated in Subsection (e);

"(2) whether sufficient mitigating circumstances exist as enumerated in Subsection (f) that outweigh aggravating circumstances found to exist.

"(c) Notwithstanding the recommendation of a jury, the court after weighing the aggravating and mitigating circumstances shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings on which the sentence of death is based as to the facts:

"(1) that sufficient aggravating circumstances exist as enumerated in Subsection (f); and

"(2) that there are insufficient mitigating circumstances, as enumerated in Subsection (g), to outweigh the aggravating circumstances.

"(d) In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in Subsections (e) and (f) and based upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment.

"(e) Aggravating circumstances shall be limited to the following:

"(1) the murder was committed by a person under sentence of imprisonment;

"(2) the defendant was previously convicted of another murder or of a felony involving the use or threat of violence to the person;

"(3) the defendant knowingly created a great risk of death to many persons;

"(4) the murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit any kidnapping, burglary, robbery, aggravated rape, or arson;

"(5) the murder was committed for the purposes of avoiding or preventing a lawful arrest or effecting an escape from custody;

"(6) the murder was committed for pecuniary gain;

"(7) the murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws; and

"(8) the murder was especially heinous, atrocious, or cruel.

"(f) Mitigating circumstances shall be the following:

"(1) the defendant has no significant history of prior criminal activity;

"(2) the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

"(3) the victim was a participant in the defendant's conduct or consented to the act;

"(4) the defendant was an accomplice in the murder committed by another person and his participation was relatively minor;

"(5) the defendant acted under extreme duress or under the substantial domination of another person;

"(6) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and

"(7) the age of the defendant at the time of the crime.

"(g) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Court of Criminal Appeals for good cause shown. Such review by the Court of Criminal Appeals shall have priority over all other cases, and shall be heard in accordance with rules promulgated by the Court of Criminal Appeals."

Sec. 2. Subsection (b), Section 2, Article 37.07, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"(b) Except as provided in Article 37.071, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment."

Sec. 3. Section 1, Article 26.05, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"Section 1. A counsel appointed to defend a person accused of a felony or a misdemeanor punishable by imprisonment, or to represent an indigent in a habeas corpus hearing, shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held, according to the following schedule:

"(a) For each day or a fractional part thereof in court representing the accused, a reasonable fee to be set by the court but in no event to be less than \$50;

"(b) For each day in court representing the accused in a capital case, a reasonable fee to be set by the court but in no event to be less than \$250;

"(c) For each day or a fractional part thereof in court representing the indigent in a habeas corpus hearing, a reasonable fee to be set by the court but

in no event to be less than \$50;

"(d) For expenses incurred for purposes of investigation and expert testimony, a reasonable fee to be set by the court but in no event to exceed \$500;

"(e) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals, a reasonable fee to be set by the court but in no event to be less than \$350;

"(f) For the prosecution to a final conclusion of a bona fide appeal to the Court of Criminal Appeals in a case where the death penalty has been assessed, a reasonable fee to be set by the court but in no event to be less than \$500."

Sec. 4. Subsection (b), Article 35.15, Code of Criminal Procedure, 1965, is amended to read as follows:

"(b) In non-capital felony cases, the State and defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together each defendant shall be entitled to six peremptory challenges and the State to six for each defendant."

Sec. 5. Articles 1.14 as amended, 1.15 as amended, 35.17, and 40.03, Code of Criminal Procedure, 1965, are amended to read as follows:

"Article 1.14. Waiver of rights

"The defendant in a criminal prosecution for any offense may waive any rights secured him by law."

"Article 1.15. Jury in Felony

"No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14; provided, however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The evidence may be stipulated if the defendant in such case consents in writing, in open court, to waive the appearance, confrontation, and cross-examination of witnesses, and further consents either to an oral stipulation of the evidence and testimony or to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court. Such waiver and consent must be approved by the court in writing, and be filed in the file of the papers of the cause."

"Article 35.17. Voir dire examination

"1. When the court in its discretion so directs, except as provided in Section 2, the state and defendant shall conduct the voir dire examination of prospective jurors in the presence of the entire panel.

"2. In a capital felony case, the court shall propound to the entire panel of prospective jurors questions concerning the principles, as applicable to the case on trial, of reasonable doubt, burden of proof, return of indictment by grand jury, presumption of innocence, and opinion. Then, on demand of the State or defendant, either is entitled to examine each juror on voir dire individually and apart from the entire panel, and may further question the juror on the principles propounded by the court."

"Article 40.03. Grounds for new trial in felony

"New trials, in cases of felony, shall be granted for the following causes, and for no other:

"1. Where the defendant has been tried in his absence, or has been denied counsel;

"2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant;

"3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors;

"4. Where a juror has received a bribe to convict, or has been guilty of

any other corrupt conduct;

"5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial:

"6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits;

"7. Where the jury, after having retired to deliberate upon a case, has received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring for deliberation, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere drinking of liquor by a juror shall not be sufficient ground for a new trial;

"8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror: and the verdict may, in like manner, be sustained by such affidavit; and

"9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved.

Sec. 6. (a) If Senate Bill No. 34, Regular Session, 63rd Legislature, adopting a new Penal Code, is enacted and takes effect subsequent to the effective date of this Act, Article 1 of this Act is effective until the date the new Penal Code takes effect, in which case Article 1 then expires and Article 2 of this Act takes effect.

(b) If Senate Bill No. 34, Regular Session, 63rd Legislature, is not enacted, then Article 2 of this Act has no effect and Article 1 is effective on and after the effective date of this Act.

Sec. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

MEIER  
CREIGHTON

The amendment was read.

Senator Jones offered the following amendment to the pending amendment to the bill:

Amend the Meier amendment to C.S.H.B. 200 in Section 1, Article 1257 (e)(1) by adding the words ", or under the supervision of the Texas Youth Council," following the words "Texas Department of Corrections".

The amendment to the pending amendment was read and was adopted.

Senator Braecklein offered the following amendment to the pending amendment to the bill:

Amend the pending Meier amendment, Subdivision (3) of Subsection (B) of the quoted Article 1257a in C.S.H.B. 200 to read as follows:

"(3) the person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;"

The amendment was read and was adopted.

Senator Gammage offered the following amendment to the pending amendment to the bill:

Amend the Meier amendment to C.S.H.B. 200 by striking all language below line 10, on page 1 and above line 24, on page 2.

The amendment to the pending amendment was read.

Question on the adoption of the amendment to the pending amendment, "Yeas" and "Nays" were demanded.

The amendment to the pending amendment failed of adoption by the following vote: Yeas 4, Nays 27.

Yeas: Gammage, Mauzy, Santiesteban and Wallace.

Nays: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Wolff.

Senator Gammage offered the following amendment to the pending amendment to the bill:

Amend the Meier amendment to C.S.H.B. 200 by inserting on page 1, line 24, the following:

"(6) the person murdered was a private citizen, and the person committing the murder was a peace officer, fireman, or employed in the operation of a penal institution."

The amendment to the pending amendment was read.

On motion of Senator Meier, the amendment to the amendment was tabled.

Senator Mengden offered the following amendment to the pending amendment to the bill:

Amend the pending Meier amendment, Section 1, Subsection (b) in quoted Article 1257a by adding Subdivision 6 to the Committee Substitute to C.S.H.B. 200 to read as follows:

"(6) the person intentionally committed the murder in the course of committing or attempting to commit a felony."

The amendment to the pending amendment was read.

On motion of Senator Meier, the amendment to the pending amendment was tabled.

**RECORD OF VOTE**

Senator Clower asked to be recorded as voting "Nay" on the motion to table the amendment.

**REASON FOR VOTE**

The reason I voted for this amendment is because in Missouri, a bank manager, his wife and teen-age daughter were kidnapped. He fully cooperated with his abductors, made a sizable withdrawal from his bank and delivered the money to the kidnappers, who thereupon tied him and his family to trees and shot them dead.

In Terrence, California, bandits held up a movie theatre, tied up three men and woman employee, and emptied the safe of \$2,000. Before leaving, they cut the throats of their four helpless victims.

When a criminal faces the penalty of a long prison term for armed robbery and also faces the penalty of a long prison term for murder, what is there to deter him from killing his victim?

How can a person advocate mercy for the perpetrators of the above crimes when they showed no mercy at all to their helpless victims?

How long can we remain a stable and viable society when the only people being executed are the innocent victims of crime?

A major reason that crime has gone up 11 times faster than population, that shoplifting is destroying retail business, that bus drivers no longer carry change, that drug abuse is leeching away the lives of 10% of our high school children, that airline passengers face daily risk of hijack, that a rape occurs every 15 minutes, that little children are not safe any more even in their yards—is that just when we need more effective law enforcement, when we most need to strengthen the certainty of sanction, we are now entering the second decade of the Supreme Court's "Criminal Justice Revolution", we are facing the greatest crime wave in history. I suggest we leave the mountain top of theory and return to the market place of plain reason. The adoption of this amendment will both deter such atrocities in the future and insure that murderers do not get another chance to destroy innocent people.

The death penalty must apply to anyone who executes his victim during the commission of a felony.

**MENGDEN**

Senator Mengden offered the following amendment to the pending amendment to the bill:

Amend the pending Meier amendment, Section 1, Subsection (b) in quoted Article 1257a by adding Subdivision ( ) to Committee Substitute to H.B. 200 to read as follows:

"( ) The person murdered a child six (6) years of age or younger, after birth."

The amendment to the pending amendment was read.

On motion of Senator Meier, the amendment to the pending amendment was tabled.

**REASON FOR VOTE**

I voted for this amendment because the New York Times, Feb. 17, 1972 "New Census Study Projects a Decline in Rate of Births. Trend Called Dramatic."

"Nation is found nearing zero population growth among younger women."

Donald Bogue, Ph.D., Director, Family Study Center,  
University of Chicago, September 8, 1971, Medical Tribune

"White Anglo-Saxon Protestants and Jewish-American Population are already reproducing at or below zero-growth level."

Recent national statistics in May 1972 by the Department of Health, Education and Welfare announced that the U.S. birthrate dipped to an all-time low during 1971 and had reached the level at which a society merely replaces itself. In 1971 the rate of 2.136 children is slightly above the rate of 2.110 at which a stable society achieves zero population growth.

In the first half of December 1972 the Census Bureau reported that the rate had fallen to an all-time low of 2.08 which is below the ZPG level. In the last half of 1972 the birthrate dropped to 2.05, well below the ZPG level, and in the first quarter of 1973 in the United States, the birthrate is now at 1.98 with no leveling off in sight, which is not ZPG, but will result in an actual decrease of population due to lack of births to even maintain our present population.

If you're a businessman, this chart may be the shape of your future. It shows how the birthrate in the U.S. has been declining until now it's below the rate of replacement. This will have tremendous economic, social and political repercussions."

Not only are children the most precious asset any nation possesses, but a child under 6 -- 5, 4, 3 . . . will not even try to run when a car rolls up, stops and a shotgun or high-powered rifle is pointed, aimed and then the trigger is pulled.

Most of these type killings are either joy killings or the murderer is on drugs, or smoking marijuana, as was the case a couple of weeks ago in Houston, New York and Los Angeles.

We--and by we, I mean society--can no longer afford the luxury of permitting murderers of young children to roam about our cities, towns and communities.

The one sure method of preventing a re-occurrence of this depravity is the death penalty.

#### MENGDEN

Senator Mengden offered the following amendment to the pending amendment to the bill:

Amend the pending Meier Committee Substitute to the H.B. 200 by renumbering Sections 2 and 3 as Sections 3 and 4 and adding a new Section 2 to read as follows:

Sec. 2. The Penal Code of Texas, 1925, is amended by adding Article 1723a to read as follows:

"Article 1723a. (a) A person commits an offense if he places an explosive or incendiary device with intent that it detonate or ignite and injure or kill any person.

"(b) Any person who violates this Article shall upon conviction be punished by death or by imprisonment for life.

"(c) The provisions of Subsections (c) through (m) of Article 1257a, Penal Code of Texas, 1925, apply to the assessment of sentence under this Article."

The amendment to the pending amendment was read.

On motion of Senator Ogg, the amendment to the pending amendment was tabled.

Senator Clower offered the following amendment to the pending amendment to the bill:



Amend pending Meier amendment to C.S.H.B. 200 by adding a new subsection to read as follows:

"The punishment provided for hereunder shall be any term of years from five (5) years to life or death."

The amendment to the pending amendment was read.

On motion of Senator Meier, the amendment to the pending amendment was tabled.

Senator Clower offered the following amendment to the pending amendment to the bill:

Amend C.S.H.B. 200 by adding a new subsection to read as follows:

"The defendant shall have the option of sentencing hereunder by the judge or jury any other provisions notwithstanding."

The amendment to the pending amendment was read.

Senator Ogg moved to table the amendment to the pending amendment.

Question on the motion to table the amendment to the pending amendment, "Yeas" and "Nays" were demanded.

The motion to table prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Creighton, Harrington, Harris, Herring, Hightower, Jones, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Sherman, Snelson, Traeger and Wolff.

Nays: Clower, Gammage, Kothmann, Longoria, Mauzy, Patman, Santiesteban, Schwartz and Wallace.

Senator Wallace offered the following amendment to the pending amendment to the bill:

Amend C.S.H.B. 200 by striking therefrom all of Section 1 and substituting therefor the following:

"Section 1. Punishment for Murder

"(A) A person convicted of murder shall be put to death:

"(B) Murder is defined as follows:

"(1) Smiting one with an instrument of iron so that he dies.

"(2) Smiting with an instrument of wood so that he dies.

"(3) Smiting him by throwing a stone so that he dies."

The amendment to the pending amendment was read.

On motion of Senator Ogg the amendment was tabled.

### RECORD OF VOTES

Senators Gammage and Wallace asked to be recorded as voting "Nay" on the motion to table the amendment.

Senator Mengden offered the following amendment to the pending amendment to the bill:

Amend the pending Meier amendment to the Committee Substitute for H.B. 200 by adding under Subsection (b) of Section 1, Article 1, and Article 2, Section 1, subsection 1903(a) a new subsection (6) that reads as follows:

"(6) The person commits murder by use of an explosive or incendiary device that detonates or ignites and kills any person."

The amendment to the pending amendment was read and was adopted.

Question recurring on the adoption of the amendment by Senator Meier, the amendment as amended was adopted.

#### RECORD OF VOTE

Senator Gammage asked to be recorded as voting "Nay" on the adoption of the amendment.

The bill as amended was passed to third reading.

#### RECORD OF VOTE

Senator Gammage asked to be recorded as voting "Nay" on the passage of the bill to third reading.

#### COMMITTEE SUBSTITUTE HOUSE BILL 200 ON THIRD READING

Senator Ogg moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 200 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Creighton, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Schwartz, Sherman, Snelson, Traeger and Wolff.

Nays: Clower, Gammage, Mauzy, Santiesteban and Wallace.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Wolff.

Nays: Gammage, Mauzy and Wallace.

#### REASON FOR VOTE

House Bill 200 fails to meet the constitutional tests laid down by the Supreme Court of the United States. It is a futile gesture to ignore these guidelines and can result only in further litigation with the inevitable result that this legislation will be held in violation of constitutionally guaranteed

rights. If this Legislature wants to pass a death penalty bill, it should at least pass one which comes close to standing constitutional muster. This bill is not even in the ball park of constitutionality.

MAUZY

### REASON FOR VOTE

I voted for reinstituting the death penalty because what will motivate the man who already has received one or two "Life" sentences for murder, not to murder again? Why should he not attempt to escape from prison by killing the guards? Why should he not enrich himself by kidnapping children, burying them alive, and threatening to let them suffocate unless a city pays a huge ransom? What will stop snipers who kill policemen in cold blood? Why not hijack an airliner even though it endangers a hundred lives? Why not bomb the Math Building at University of Wisconsin to express one's perverted "protest"? Why not shotgun four-year old children to death for the thrill of it, or methodically execute a whole group of innocent people, as did Manson and Speck? For to remove the death penalty is to repeal the criminal law for repeaters. The death penalty is the only way to protect the innocent from the incorrigible killer.

I do not say that the possibility of death would deter each of these crimes in every case; but I do say that "life imprisonment" cannot. This means that no matter what crimes he subsequently commits, there will be no punishment. And, considering parole board solicitude for prisoners, "life" often means only a few years on confined welfare.

Starting with the principle that the State exists for the individual: civil rulers are given the charge to promote the common good of society. And bearing this in mind, some people are so criminal that the State cannot otherwise efficaciously protect itself against new crimes on their part except by cutting them off from the social body.

It is the duty of the state to protect in its legislation the law-abiding citizens, and all admit that in defending one's life one may cause the death of an unjust aggressor. The criminals mentioned above are unjust aggressors against society, and the state in defense may inflict capital punishment upon them.

MENGDEN

### HOUSE BILL 728 RE-REFERRED

On motion of Senator Schwartz and by unanimous consent, H.B. 728 was referred from the Committee on Jurisprudence to the Committee on Administration.

### SENATE CONCURRENT RESOLUTION 122

Senator Aikin offered the following resolution:

S.C.R. 122, Suspending Joint Rules to permit consideration of House Bill 834 by the House of Representatives on Thursday, May 24.

On motion of Senator Aikin and by unanimous consent, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

Yeas: Adams, Aikin, Andujar, Blanchard, Braecklein, Brooks, Clower, Creighton, Gammage, Harrington, Harris, Herring, Hightower, Jones, Kothmann, Longoria, Mauzy, McKinnon, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger, Wallace and Wolff.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 714**

Senator Moore submitted the following Conference Committee Report:

Austin, Texas  
May 23, 1973

The Honorable William P. Hobby  
President of the Senate

The Honorable Price Daniel, Jr.  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee appointed to adjust the differences between the House and Senate on S.B. 714 have met and adjusted our differences and beg leave to recommend that it be passed in the form attached hereto.

Respectfully submitted,

MOORE  
HERRING  
AIKIN  
ANDUJAR  
McKINNON  
On the part of the Senate

CAVNESS  
VALE  
PRESNAL  
HOLLOWELL  
WILLIAMS  
On the part of the House

S.B. 714,

**A BILL**

**TO BE ENTITLED**

An Act to provide a procedure whereby members of the judicial, teachers' and employees' retirement systems of Texas with service in two or more classes of membership in such retirement systems may establish creditable service; providing for payment of member and state contributions; providing proportionate service retirement benefits for members with qualified total service by each system; prohibiting the use of funds of any state retirement system for the payment of benefits in any other system; providing an effective date; providing a saving clause; repealing conflicting laws; and declaring an emergency.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

Section 1. Purpose.

The purpose of this Act is to provide proportionate service retirement benefits to eligible members who shall have performed service and made contributions in more than one class of membership in the state funded retirement systems named in this Act; and the applicability of this Act is hereby limited to such persons subject to the provisions of this Act and the provisions of the other state retirement laws not in conflict with this Act.

Sec. 2. Creditable Service.

(a) Effective September 1, 1973, any eligible person who is a member of

one of the systems and not retired under any of the provisions of either the Judicial Retirement System of Texas, Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), or the Teacher Retirement System of Texas, Chapter 470, Acts of the 45th Legislature, Regular Session, 1937, as amended (Chapter 3, Texas Education Code, Vernon's Texas Civil Statutes), or the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), may: (1) continue membership; (2) become a member of the other systems for the purpose of establishing or re-establishing creditable service in such other systems, provided that the total creditable service among such systems shall equal or exceed the minimum amount of creditable service required for a service retirement at age 60 in any class of membership in which he has performed service creditable in any of the systems. Service may not be claimed for the purposes of this Act unless such service has first been classified as creditable service in the system in which such service is to be established.

(b) Creditable service may not be granted for the purposes of this Act by any of the systems herein named if such service is credited by any other retirement system established under or governed by the laws of this state; provided further that credit for any service granted hereunder shall not thereafter be credited by any other retirement system or program established under or governed by the laws of this state.

#### Sec. 3. Membership Contributions.

(a) Credit for the purposes of this Act shall be established only upon proper certification by the authority having custody of the payrolls covering such service and upon payment of all contributions, interest, and membership fees due for eligible service approved by the system granting credit for such service. Any payment required shall be paid in a lump sum.

(b) If the service to be established has not heretofore been established the person claiming such service shall pay contributions equal to six percent of the applicable compensation rate of each month of such service; provided, however, the minimum contribution shall not be less than \$18 per month. Persons claiming such service shall pay interest on the contributions due at the rate of 10 percent per year dating from the date the service to be established was performed plus membership fees.

(c) If the service to be established is previous service canceled by a refund of contributions, the system in which service was canceled shall require the payment of all contributions previously refunded plus applicable interest and membership fees.

(d) Interest payments required by this Act shall be calculated on the basis of the state fiscal year.

(e) Membership fees shall be due and payable for each fiscal year in accordance with the laws governing the system granting credit for such service.

(f) A person who is a member, as an elective state official, and as such has creditable service of eight or more years in one of the employee retirement systems authorized by the Constitution and statutes of the State of Texas is eligible to claim retirement service credit for prior service he had as a federal employee. In order to obtain credit for prior federal service, a person shall obtain such proof of prior federal service as is satisfactory to the Texas retirement system concerned and shall pay both the employee's share and employer's share of contributions, interest, and any membership fee for the years and months for which credit is sought. The contributions for prior federal service shall be computed and paid into the applicable Texas retirement system based on the contributions paid into the retirement system by the State of Texas and by the individual at the beginning of the person's service to the State of Texas as an elected state official. On proof of prior service and payment of contributions, interest, and membership fee as provided by this section, the person shall be granted retirement service credit for the prior federal service. No person may receive credit under this section, however, for more than six years of prior federal service. In computing the amount of prior federal service

creditable, a person shall receive one year of retirement credit for each full year and one year of retirement credit for each 6 months or longer, but less than 12 months, that he worked as a federal employee. Credit for prior service as a federal employee may not be claimed under this section by any person who is, at the time of making claim for such service credit, receiving or eligible to receive, federal civil service retirement benefits, or retirement benefits based upon 20 years of full-time active federal military service, or the equivalent thereof.

(g) Any member while serving as a member of the legislature or in any statewide elective office shall, upon verification of service and payment of contributions, interest and fees as provided in this Act, be granted creditable service for previous employment as an assistant district attorney or as an assistant criminal district attorney in a County in which there was no district attorney at the time such service was performed. Contributions required of members claiming such service shall be based upon state salaries paid to district attorneys during the period of time for which such service is claimed, provided however, the minimum contribution shall not be less than \$24 per month. Such service credit for previous employment as an assistant district attorney or as an assistant criminal district attorney shall be included in determining all death benefits and eligibility for selection of an optional death benefit plan and in calculating occupational disability retirement benefits. Such service credit for previous employment as an assistant district attorney or as an assistant criminal district attorney shall be included in calculating service retirement and non-occupational disability retirement benefits only if the member at the time of his retirement has 12 or more years creditable service as an elective state official exclusive of military service credit and service credit for previous employment as an assistant district attorney or as an assistant criminal district attorney.

#### Sec. 4. State Contributions.

(a) The system in which such service is established shall receive from the general revenue fund of the state contributions in the amount required by the laws governing that system for all such service on which state contributions have not heretofore been paid.

(b) State contributions shall be paid in accordance with the prescribed procedure governing the system in which such service is established.

#### Sec. 5. Membership Benefits.

(a) After establishing membership and creditable service, as provided herein, the member shall upon attaining age 60, or as otherwise provided by law, be entitled to proportionate service retirement benefits computed on the basis of his length of creditable service in each class of membership in any of the systems in which such service has been granted.

(b) Any eligible member may receive a service retirement annuity at age 60, or as otherwise provided by law, provided the total creditable service is equal to or exceeds the minimum amount of creditable service required for a service retirement in any class of membership in any of the systems for which he has been granted creditable service, and further provided that any service retirement annuity selection made under the provisions of this Act shall be the same in all systems. Each system shall be responsible only for the payment of that portion of the service retirement annuity which is computed for each class of service at the relative value of such service in the system in which it has been credited. Nothing herein shall authorize the combining of all such creditable service into one of the systems.

#### Sec. 6. Administration.

(a) It is specifically declared to be the intention of the legislature that the three systems, as specified herein, shall cooperate fully, each with the others, so that funds of any of the systems not be used for the payment of benefits for services credited in any of the other systems.

(b) The provisions of this Act shall be mandatory on each board of trustees and the administrative officers of each system. The respective boards of trustees shall adopt all necessary rules and regulations required for the

administration of this Act, and shall at all times maintain and protect the funds of the separate systems.

Sec. 7. This Act shall become effective September 1, 1973.

Sec. 8. If any section, subsection, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act, and it is hereby declared that this Act would nevertheless have been passed without such section, subsection or clause so declared unconstitutional.

Sec. 9. The provisions of this Act shall not prohibit any person with creditable service in more than one of the retirement systems named in this Act from combining such credit into one of the retirement systems under the provisions of Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended by Chapter 230, Acts of the 56th Legislature, Regular Session, 1959, (Article 6228a-2 Vernon's Texas Civil Statutes). With such exception all provisions of the law otherwise inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

Sec. 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act shall be in force from and after its passage, and be it so enacted.

The Conference Committee Report was read and filed with the Secretary of the Senate.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 807**

Senator Gammage submitted the following Conference Committee Report:

Austin, Texas  
May 22, 1973

The Honorable William P. Hobby  
President of the Senate

The Honorable Price Daniel, Jr.  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee appointed to adjust the differences between the House and Senate on S.B. 807 have met and adjusted our differences and beg leave to recommend that it be passed in the form attached hereto.

Respectfully submitted,

BLYTHE  
MASSEY  
CLAYTON  
WILSON  
DENTON  
On the part of the House

GAMMAGE  
TRAEGER  
HARRINGTON  
JONES  
WALLACE  
On the part of the Senate

S.B. 807,

A BILL

TO BE ENTITLED

An Act relating to the disqualification of members of governing boards of certain districts created under Article III, Section 52, as amended, and Article XVI, Section 59, as amended, of the Texas Constitution; amending the Water Code, by adding Sections 50.024, 51.0721, 53.0631, and 54.1021; providing penalties and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Chapter 50, Water Code, is amended by adding Section 50.024 to read as follows:

"Sec. 50.024. DISQUALIFICATION OF MEMBERS OF GOVERNING BOARDS. (a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

"(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

"(2) he is or was within the two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

"(3) he is a developer of property in the district;

"(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

"(5) he is or has been within the two years immediately preceding his election or appointment to the board:

"(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

"(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

"(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

"(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

"(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the



disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve."

Sec. 2. Chapter 51, Water Code, is amended by adding Section 51.0721 to read as follows:

**"Sec. 51.0721. DISQUALIFICATION OF MEMBERS OF THE BOARD.**

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

"(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

"(2) he is or was within two years immediately preceding his election or appointment to the board an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

"(3) he is a developer of property in the district;

"(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

"(5) he is or has been within the two years immediately preceding his election or appointment to the board:

"(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

"(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

"(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve."

Sec. 3. Chapter 53, Water Code, is amended by adding Section 53.0631 to read as follows:

**"Sec. 53.0631. DISQUALIFICATION OF MEMBERS OF THE BOARD.**

(a) A person is disqualified from serving as a member of the board if:

"(1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

"(2) he is or was within two years immediately preceding his

election or appointment to the board an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

"(3) he is a developer of property in the district;

"(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

"(5) he is or has been within the two years immediately preceding his election or appointment to the board:

"(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

"(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who willfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

"(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve."

Sec. 4. Chapter 54, Water Code, is amended by adding Section 54.1021 to read as follows:

"Sec. 54.1021. DISQUALIFICATION OF MEMBERS OF THE BOARD.

(a) A person is disqualified from serving as a member of the board of a district if:

"(1) he is related within the third degree of affinity or consanguinity to a member of the board or the manager, engineer, or attorney for the district;

"(2) he is or was within the two years immediately preceding his election or appointment an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

"(3) he is a developer of property in the district;

"(4) he is serving or has served within the last two years immediately preceding his election or appointment to the board as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

"(5) he is or has been within the two years immediately preceding his election or appointment to the board:

"(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the

public generally; or

"(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

"(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

"(c) Any person who wilfully violates the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

"(d) As used in this section, 'developer of property in the district' means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

"(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve."

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE ON HOUSE BILL 264

Senator Ogg called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 264 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 264 before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ogg, Blanchard, Herring, Santiesteban and Longoria.

#### NOTICES OF INTENT

The following Notices of Intent were filed with the Secretary of the Senate:

Thursday, May 24, 1973

H.B. 68 - Senator Blanchard  
 H.B. 91 - Senator Patman  
 H.B. 118 - Senator Mauzy  
 H.B. 133 - Senator Gammage  
 H.B. 167 - Senator Longoria  
 H.B. 181 - Senator Patman  
 H.B. 285 - Senator Moore  
 H.B. 568 - Senator Snelson  
 H.B. 750 - Senator Gammage  
 H.B. 901 - Senator Moore  
 H.B. 935 - Senator Schwartz  
 H.B. 1158 - Senator Blanchard  
 H.B. 1165 - Senator Kothmann  
 H.B. 1188 - Senator Longoria  
 H.B. 1353 - Senator Moore  
 S.B. 521 - Senator Gammage  
 S.B. 991 - Senator Patman  
 S.B. 329 - Senator Schwartz  
 H.B. 569 - Senators Ogg and Brooks  
 H.B. 200 - Senator Ogg  
 H.B. 550 - Senator Traeger  
 H.B. 628 - Senator Traeger  
 H.B. 859 - Senator Jones  
 H.B. 1183 - Senator Jones  
 H.B. 1487 - Senator Jones  
 S.B. 184 - Senator Mengden  
 C.S.S.B. 628 - Senator Mengden  
 H.C.R. 65 - Senator Wallace  
 H.B. 370 - Senator Mauzy  
 H.B. 371 - Senator Mauzy  
 H.B. 441 - Senator Mauzy  
 S.B. 687 - Senator Mauzy  
 S.B. 285 - Senator Mauzy  
 S.B. 852 - Senator Mauzy  
 H.B. 116 - Senator Mauzy  
 H.B. 1691 - Senator Jones  
 H.B. 68 - Senator Traeger  
 H.B. 845 - Senator Brooks  
 C.S.H.B. 162 - Senator Brooks  
 H.B. 825 - Senator Sherman  
 H.B. 1153 - Senator Sherman  
 S.B. 911 - Senator Aikin  
 H.B. 4 - Senator Meier  
 C.S.H.B. 1200 - Senator Andujar  
 H.B. 1519 - Senator Santiesteban  
 H.B. 1520 - Senator Santiesteban  
 H.B. 844 - Senator Santiesteban  
 H.B. 738 - Senator Santiesteban  
 H.B. 735 - Senator Santiesteban  
 H.B. 548 - Senator Santiesteban  
 H.B. 460 - Senator Santiesteban  
 H.B. 55 - Senator Santiesteban  
 H.B. 411 - Senator Aikin

#### MEMORIAL RESOLUTIONS

S.R. 842 - By Senator Blanchard: Memorial resolution for Thomas M.  
 "Nubbin" Brittain.

S.R. 843 - By Senator Blanchard: Memorial resolution for Windsor Q. Bryan.

S.R. 847 - By Senator McKinnon: Memorial resolution for Dr. William C. Best.

S.R. 849 - By Senator Adams: Memorial resolution for Garland Due.

#### WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 840 - By Senator Herring: Extending welcome to Mr. and Mrs. Doug Harrington and Douglas Ray Harrington, Jr. and Dana Michelle Harrington.

S.R. 841 - By Senator Snelson: Commemorating 50th Anniversary of Discovery of Santa Rita I.

S.R. 845 - By Senator Brooks: Extending congratulations to James Fonteno.

S.R. 846 - By Senator Brooks: Extending congratulations to Danny Van Rheen.

S.R. 847 - By Senator Adams: Extending congratulations to Teresa A. Parish.

S.R. 850 - By Senator Wolff: Extending congratulations to St. Agnes Catholic Church of San Antonio.

S.R. 851 - By Senator Clower: Extending welcome to Wayne Cloud.

S.R. 852 - By Senator Patman: Extending welcome to Miss R. E. A. Susie Howard.

S.R. 853 - By Senator Patman: Commending Texas Farmers, Ranchers and other Agri-businessmen.

#### RECESS

On motion of Senator Aikin the Senate at 5:22 o'clock p.m took recess until 8:00 o'clock a.m. tomorrow.

#### APPENDIX

##### Sent to Governor

Wednesday, May 23, 1973

S.C.R. 117	S.B. 529
S.C.R. 118	S.B. 613
S.B. 51	S.B. 708
S.B. 66	S.B. 781
S.B. 188	S.B. 782
S.B. 205	S.B. 831
S.B. 256	S.B. 889
S.B. 298	S.B. 906
S.B. 356	S.B. 920
S.B. 401	S.B. 937
S.B. 448	S.B. 942
S.B. 449	S.B. 945
S.B. 450	S.B. 946

S.B. 499

S.B. 899

**EIGHTIETH DAY**  
(Continued)  
(Thursday, May 24, 1973)

After Recess

The Senate met at 8:00 o'clock a.m. and was called to order by Senator Hightower.

**LOCAL AND UNCONTESTED BILLS CALENDAR**

The Presiding Officer (Senator Hightower in Chair) announced that the time had arrived for the consideration of the Local and Uncontested Bills Calendar in accordance with the provisions of S.R. 291.

The following bills were laid before the Senate, read second time, passed to engrossment, read third time and passed: (Sponsor, vote on suspension of the Constitutional Three-Day Rule and final passage indicated after each bill.)

S.B. 918 (Mauzy) (31-0)(31-0)

S.B. 970 (Brooks) (31-0)(31-0)

S.B. 976 (Traeger) (31-0)(31-0)

(Senator Adams in Chair)

S.B. 989 (Mengden) (31-0)(31-0)

S.B. 992 (Herring) (31-0)(31-0)

S.C.R. 114 (Herring) (vv)

S.R. 827 (Andujar) (vv)

S.R. 836 (McKinnon) (vv)

H.B. 55 (Santiesteban) (31-0)(31-0)

H.B. 76 (Mauzy) (31-0)(31-0)

H.B. 155 (Mauzy) (29-2) Sherman and Creighton "Nay" (29-2) Sherman and Creighton "Nay"

H.B. 224 (Brooks) (30-1) Creighton "Nay" (30-1) Creighton "Nay"

H.B. 331 (Blanchard) (31-0)(31-0)

H.B. 337 (Harrington) (31-0)(31-0)

H.B. 365 (Mauzy) (31-0)(31-0)